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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,213	09/17/2004	Roger Minoretti	GRIMM 235-KFM	9179

7590 11/16/2006
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EXAMINER

LEWIS, RALPH A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NIT

Office Action Summary	Application No. 10/502,213	Applicant(s) MINORETTI ET AL	
	Examiner Ralph A. Lewis	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 10-15 and 18-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings filed 01 September 2006 are approved.

Rejections based on Prior Art

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witzig (US 4,433,956) in view of Testa (US 6,358,255).

Witzig discloses a distractor module that meets all the limitations of applicant's "first distractor module." More particularly, note U-shape with mid section 11, end segments 12 and linear distraction elements 13. Witzig, however, fails to disclose the claimed second distractor module. The present claims call for no interaction or even common use between the first and second distractor modules. A medical supply cabinet or supply store that happened to have both types of distractor modules available would meet the limitations of the present claims, regardless of even whether or not the two modules were even used together. Testa discloses a distractor module 1 comprised of segments (halves) that are hinged together wherein in one half segment can be related to a frontal segment to be distracted and another segment to the chin (Figures 11A, 12). For a doctor or medical supply company to have both a Witzig

device and a Testa device available in their inventory would have been obvious to one of ordinary skill in the art.

In response to the present rejection applicant argues that their devices are intended to be used differently from the devices disclosed Witzig and Testa. The examiner does not dispute applicant's assertion, but remains of the firm position that a known device does not become patentable merely because some one comes up with a new different use for the device. More particularly a prior art screw does not become patentable merely because someone intends for it to be screwed into some new material. Applicant fails to set forth in the claims any objectively ascertainable structural distinctions from the prior art devices.

Claims 1–9, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razdolsky et al (US 5,829,971) in view of Testa (US 6,358,255).

Razdolsky et al disclose a distractor module that meets all the limitations of applicant's "first distractor module." More particularly, note U-shape with mid section 15, end segments 3 and linear distraction elements 8. In regard to claim 3, note Figure 8. Radolsky et al, however, fail to disclose the claimed second distractor module. The present claims call for no interaction or even common use between the first and second distractor modules. A medical supply cabinet or supply store that happened to have both types of distractor modules available would meet the limitations of the present claims, regardless of even whether or not the two modules were even used together. Testa discloses a distractor module 1 comprised of segments (halves) that are hinged

together wherein in one half segment can be related to a frontal segment to be distracted and another segment to the chin (Figures 11A, 12). For a doctor or medical supply company to have both a Radolsky et al device and a Testa device available in their inventory would have been obvious to one of ordinary skill in the art.

Action Made Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Allowable Subject Matter

Claims 10-15 and 18-23 are objected to and would be allowable if rewritten in independent form and to include all of the limitations of the claims from which they depend.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis
November 07, 2006



Ralph A. Lewis
Primary Examiner
Au 3732